

REPRESENTING INMATES WITH DISABILITIES

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Overview of Session

- Introductions
- Role of the Attorney
- Brief Overview of Disabilities
- Attorney Expectations
- Top Ten ADA Issues to Watch For
- Final Thoughts

Americans with Disabilities Act

- **Enacted in 1990 and significantly amended in 2008**
 - Prohibits discrimination and guarantees that people with disabilities have equal opportunities.
 - Title II (42 U.S.C. section 12131 et seq.) applies to “public entities”.
 - “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” (42 U.S.C. section 12132)

ADA Definitions

- **Disability** – A physical or mental impairment that substantially limits one or more of the major life activities.
- **Major Life Activity** – A basic activity or function performed by the average person without difficulty such as caring for one's self, or performing manual tasks, such as seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Also includes limitations with major bodily functions.

Role of the Attorney

- You are in the **best position** to ensure your client's disability is adequately addressed at all stages ...
 - While preparing for the hearing
 - During the hearing
 - Addressing any concerns post-hearing

Overarching Goals for Assisting a Client

- **Goal** – To enable inmates with disabilities to prepare for and participate in their hearings to the best of their abilities.
- **Goal** – Ensure all necessary accommodations are provided to your client throughout the hearing.
- **Goal** – Advocate to the hearing panel how the inmate's disability may impact relevant suitability factors.

Brief Overview of Disabilities



VISION IMPAIRMENTS



- Getting around the prison
 - Typically housed in same prisons
 - May be issued white canes/vests
 - ADA Worker Program (*previously Inmate Disability Assistance Program*)
- Assistive Devices available in law libraries and upon request
 - May include Large Print Materials, Audio Books/Recordings, Computer Text to Talk, Library Zoom Text Technology
- **Key Considerations:**
 - Inmate may have limited access to program/services that involve reading or writing
 - Inmate may have difficulty reviewing documents to prepare for the hearing

HEARING IMPAIRMENTS



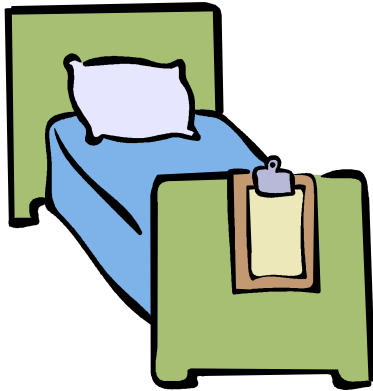
- Getting around the prison
 - Typically housed in same prisons
 - May be issued identifying vests
 - Modified Procedures for Verbal Announcements
 - Flickering Lights
 - Door-to-Door Notifications
- Help with communication
 - May include Sign Language Interpreters, Written Language, Lip Reading, Assistive Listening Devices
- **Key Considerations:**
 - Hearing aids may not be working properly.
 - Inmate may have an awkward writing style, as if writing in a foreign language.
 - Inmate may not know American Sign Language, or may only know a modified “slang” version of sign language.

MOBILITY IMPAIRMENTS



- **Health Care Appliances**
 - May include wheelchairs, canes, walkers, special shoes, and identifying vests
 - **Housing Accommodations**
 - May include wheelchair-accessible cells, toilets, and showers; ramps and elevators; grab bars; lower bunks; lower tier housing; extra mattresses
 - **Path of Travel**
 - CDCR may need to make modifications to the path of travel for the inmate to travel to various locations in the prison
-
- **Key Consideration:**
 - Inmates with mobility limitations are not required to stand up for count or get down for an alarm.

MEDICAL IMPAIRMENTS



- ▶ **Inmates with medical impairments will be triaged to determine whether specialized medical housing is necessary**
- ▶ **Specialized medical housing may include:**
 - ▶ General Acute Care Hospital (GACH)
 - ▶ Community Hospital
 - ▶ Correctional Treatment Center (CTC)
 - ▶ Outpatient Housing Unit (OHU)
 - ▶ Hospice/Palliative Care
- **Key Consideration:**
 - **Inmates in medical facilities are primarily treated as medical patients, even if they display symptoms of other disabilities.**

MENTAL HEALTH IMPAIRMENTS

CDCR Mental Health Services Delivery System:

Outpatient:

- Correctional Clinical Case Management System (CCCMS)
- Enhanced Outpatient Program (EOP)

Inpatient:

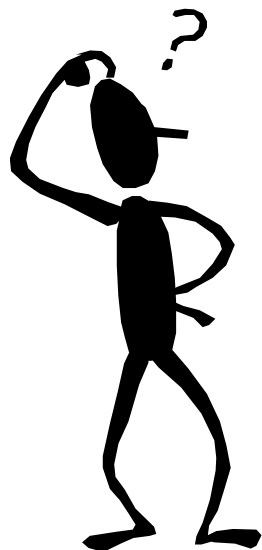
- Mental Health Crisis Bed (MHCB)
- Intermediate Care Facility (ICF)
- Acute



• **Key Considerations:**

- If your client is on suicide watch or suicide precaution (generally housed in MHCB), he or she may not be available to meet with you.
- Mental illnesses generally have no cure. Treatment may relieve symptoms.

DEVELOPMENTAL DISABILITY



- A person with a developmental disability has low cognitive functioning and substantial limitation in **adaptive functioning**:
 - communication, academic, self-care, socialization, self-advocacy/ use of resources, work, health and safety, self-direction, leisure
- Examples include:
 - At birth – Autism, Asperger's
 - Later in life – traumatic brain injury, dementia
- CDCR screens all inmates for developmental disability at intake.

DEVELOPMENTAL DISABILITY

Potential Characteristics of a Person with Developmental Disability:

- Communication below age level
- Reasoning is more concrete than abstract
- Short attention span and memory
- Inability to retain information
- Difficulty with simple tasks
- Difficulty with multi-step questions or instructions
- Does not understand the consequences of actions
- Exhibits behaviors that may be mistaken for noncompliance
- Focuses on the immediate/short term
- Immature social relationships
- Overly compliant and desire to please
- Vulnerable to exploitation

DEVELOPMENTAL DISABILITY

- Key Considerations:

The “prescription” for adaptive services is provided by a clinician on the CDC Form 128C-2 (located in the c-file).

The level and type of adaptive support services needed will vary by individual regardless of DDP classification.

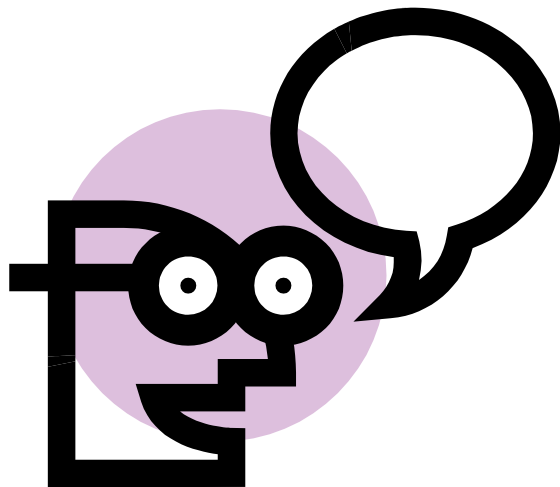
Staff should be proactive in offering assistance because some inmates may not ask for assistance. Staff should be watching for victimization concerns.

LEARNING DISORDERS



- A **learning disorder** is a cognitive disorder that affects the ability of persons with normal intellect to learn academic and social information.
- Inmates may be considered learning disabled if they:
 - (1) Have a Test of Adult Basic Education (TABE) score of 4.0 or below
 - (2) Indicate need for assistance with effective communication
 - (3) Self-identify as having a learning disorder
 - (4) Have prior verification of learning disorder from psychiatric records, education records, court documents, or other sources
- **Key Considerations:**
 - CDCR does not test inmates for learning disabilities; however, CDCR may verify past diagnoses of learning disabilities.

SPEECH & LANGUAGE DISORDERS



- **Speech Disorders** include:
 - Stuttering
 - Articulation – Difficulty forming sounds & stringing sounds together, substituting one sound for another, omitting a sound, etc.
 - Voice Disorders – inappropriate pitch, loudness, or quality
- **Language Disorders** include:
 - Delayed Language – delayed development of vocabulary and grammar
 - Aphasia – The loss of speech and language abilities resulting from stroke or head injury

FOREIGN LANGUAGE SPEAKER



- Many inmates either do not speak English at all or only as a second language.
- CDCR offers some ESL education classes.

- **Key Considerations:**

- Inmates who speak English as a second language may forget some of their English skills when faced with the stress of a hearing.
- Inmates will need help reviewing documents, which can be done with use of a telephonic interpreter service.

ATTORNEY EXPECTATIONS



Panel Attorney Program Requirements

- Review the central file
 - Particularly disciplinary history, general chronos for information on disabilities and programming
- Review DECS prior to the first contact with the client, and make necessary arrangements for the interview.
 - Use a sign language interpreter if indicated in DECs.
 - Use a foreign language interpreter, when needed to establish effective communication.

Panel Attorney Program Requirements

- “Meaningfully consult” with the client at least 45-days prior to a scheduled hearing and discuss relevant risk assessments, parole plans, disciplinary history, disability concerns, and other relevant information
 - Best practice – assist with parole plans, when possible.
- Written communication cannot be used for the following inmates:
 - Developmental Disability Program
 - Mental Health Services Delivery System (except CCCMS)
 - Learning Disabled (DNL)
 - Blind (DPV) or Vision-Impaired (DSV)
 - Test of Adult Basic Education (TABE) Score of 4.0 or lower.

Panel Attorney Program Requirements

- Document in DECS whether any accommodations were provided during the interview, and what was provided.
- Seek assistance for any logistical problems ASAP – notify BPH and try to resolve with the institution.
- Arrive at the hearing on time, and be available for the full day.
- Advocate for the client's ADA needs at the hearing.
- Submit a timely post-hearing grievance to BPH if you think any ADA rights were violated.
- Act professionally at all times.

The Board and Armstrong Plaintiffs' counsel rely on you to ensure your client's ADA needs are met.

Panel Attorney Expectations

The Board and Armstrong Plaintiffs' counsel also expect you to be working toward the three overarching goals:

- **Goal** – To enable inmates with disabilities to prepare for and participate in their hearings to the best of their abilities.
- **Goal** – Ensure all necessary accommodations are provided to your client throughout the hearing.
- **Goal** – Advocate to the hearing panel how the inmate's disability may impact relevant suitability factors.

MDO Attorney Expectations

Best Practices for handling MDO parolees

- **First** – Meet with the client prior to the day of the hearing. This allows the patient to meet you and feel comfortable on the day of the hearing.
- **Second** – MDO attorneys are required to fill out the paperwork for the appeals on a certification and annual hearing. Do not give the paperwork to the patient. Instead, put it in the basket outside of the hearing room.
- **Third** – Foreign language interpreters are telephonic for interviews and in-person for the hearing. The hospital contact will provide access to the phone.

ADA Issues to Watch For





- ISSUE – Determining How to Communicate
- Review DECS before your first client contact.
- Determine the best method of communication, and make arrangements as needed.
 - Sign Language Interpreter (SLI) - required if indicated in DECS.
 - Foreign Language interpretation – telephonic services
- Allow plenty of time to make arrangements for your interview.
- Immediately notify BPH HQ of any logistical issues, and work with the institution to resolve.
 - BPHLiferAnalyst@cdcr.ca.gov



Disability & Effective Communication System



- Review DECS DAI Summary Screen.
- Review the Form 1073 for the current hearing as well as the last hearing.
- Make an entry into DECS regarding:
 - Any accommodations that you provided during your client interview.
 - Any additional information about your client the panel should consider.

Achieving Effective Communication

- **Determine how the inmate communicates:** (verbally, nods/shakes head, written notes)
- **Use simple, concrete language:** (Avoid legal jargon and abstract concepts)
- **Rephrase and repeat questions:** (Alternatively, you may try writing, acting, or demonstrating)
- **Pause frequently so as not to overload the inmate with information:** (Give time between statements for comprehension)
- **Check for understanding:** “Can you repeat what I said in your own words?” “Do you understand what I am asking?”

Achieving Effective Communication

- **Example: Inmate is 50+, CCCMS, DD1, and Low TABE**

11 **ATTORNEY** [REDACTED]: Yes. Mr. [REDACTED] when the
12 Commissioner was discussing your Risk Assessment and the
13 Psychological Evaluation, she mentioned that the doctor
14 found you to be a high risk, and asked you if you agree
15 with that, that you are a high risk for violence? So
16 let me just ask you directly. Today, do you think you
17 are a risk for being a violent person?

18 **INMATE** [REDACTED]: No. Because I, I, I, I felt that,
19 what the question was, I thought my health high risk. I
20 thought that, the question.

Helpful Tips for Communication

- Allow additional time for discussions to accommodate your client's specific disabilities.
- Avoid distractions when possible (e.g. noise, posters on walls, cluttered paperwork).
- Explain at the outset the purpose and process of your client interview and the hearing in simple terms.
- Let the inmate know when you don't understand.
- Validate your perceptions regarding changes in the inmate's tone of voice, facial expressions, or body language.
- Ask staff around you for tips in communicating with this specific inmate.
- Attempt to refocus your client if he or she becomes confused or side-tracked.



- ISSUE – Olsen Reviews
- During your client interview, determine if your client has received an Olsen Review.
 - Olsen Reviews occur 2 - 5 months prior to the hearing.
 - Ensure your client understands his or her right to review the non-confidential portions of the central file.
 - Ensure your client was offered assistance reviewing (reading and understanding) central file, especially if declining review
- If you have concerns about how the Olsen Review was conducted, immediately notify BPH HQ and work with the institution to resolve.
 - BPHLiferAnalyst@cdcr.ca.gov
 - Institution Contacts - Board Desk, Litigation Coordinator, ADA Coordinator, Warden's Office

Example – Inmate is DD2, elderly with dementia. The Olsen Review chrono says he declined his review, but at the hearing, he says he wants a review.

CDC 128B (REV. 4/02)

Name and Number: [REDACTED]

On [REDACTED], in preparation for the Scheduled Board of Prison Terms Lifer Prisoner Hearing:

☐ Reviewed Central File

☒ Declined to review Central File

☐ No accommodation is required per the Armstrong II Remedial Plan

☒ Accommodation to effectively communicate is required per Armstrong II Remedial plan and was accomplished by See attorney 128 B

Inmate Signature/CDC# [REDACTED] Staff Signature [REDACTED]

Date _____ Olson Review (Board of Prison Terms) General Chrono

The attorney argues the following:

8 | hope that they were all explained to him and reviewed,
 9 | but even today, when you asked him if he knew what an
 10 | Olson Review was, he did not know. So, my concern is
 11 | that maybe he wasn't told what the Olson Review was, and
 12 | he said it's a form saying I don't need my Olson Review,
 13 | not a form saying I don't want it. And there is a
 14 | difference there.

Example: Inmate is 50+, CCCMS, DD1, and Low TABE

NAME and NUMBER

[REDACTED]

CDC 128-B (REV.4/74)
MCSP 452-C (REV.02/02)

I request/decline review of my Central File

[REDACTED]

[REDACTED]

SIGNATURE

NUMBER

DATE

8/24/15

SIGNATURE OF CDC OFFICIAL

DATE

8/24/15

REVIEW OF MY CENTRAL FILE TOOK PLACE ON

SIGNATURE

NUMBER

DATE

SIGNATURE OF CDC OFFICIAL

DATE

DATE 8-24-15

GENERAL CHRONO

Example: Inmate is 60+, DD3, Low TABE, Medical Bed, Spanish-Speaking

NAME and NUMBER: [REDACTED] [REDACTED] CDC 128-B

On 3/3/2015 in preparation for the Scheduled Board of Parole Hearings Lifer Prisoner Hearing I:

☐ Reviewed my Central File.

☒ Declined to review my Central File.

☐ No accommodation is required per Armstrong II Remedial Plan.

☒ Accommodation to effectively communicate is required per Armstrong II Remedial Plan and was accomplished by Provided Spanish Language Interpreter CCI [REDACTED] to interpret all documentation in Spanish to ensure effective communication

Inmate's Signature/CDC #

Staff Signature

Date: 3/3/15

OLSON REVIEW

128-B General Chrono

Example – Inmate is Spanish speaking. The hearing is postponed due to the following issues:

HEARING OBJECTIONS	
Objection	THE INMATE WAS FINALLY GIVEN A SPANISH INTERPRETER TO READ HIM HIS HEARING RIGHTS ONLY AFTER REFUSING TO SIGN THE ENGLISH FORM. HE WAS NOT PERMITTED TO ASK QUESTIONS ABOUT HIS RIGHTS AND TO HAVE EXPLANATIONS TO HIS QUESTIONS.
Party	[REDACTED] INMATE'S ATTORNEY
Ruling:	<input checked="" type="checkbox"/> Granted <input type="checkbox"/> Denied
Ruling Basis:	The inmate is not an English speaker and historically has needed assistance with interpretation services. It is reasonable for him, with his very limited education to ask questions of these basic hearing rights and to have reasonable answers given to him. The form is available in Spanish and should be provided to him in addition, he will need a Spanish interpreter to read and explain these to him as well as having Staff Assistance to help him with his questions.
Objection	INADEQUATE OLSON REVIEW PROVIDED. THE INMATE ASSERTS THAT HE WAS PROVIDED A SPANISH INTERPRETER TO REVIEW HIS CENTRAL FILE BUT WAS LIMITED TO 25 MINUTES TO PERFORM HIS REVIEW. HE ASKED QUESTIONS BUT WAS DENIED ANSWERS. 25 MINUTES WOULD NOT BE ADEQUATE TIME TO REVIEW THE FILE, EVEN FOR A PROFICIENT ENGLISH SPEAKER
Party	[REDACTED] INMATE'S ATTORNEY
Ruling:	<input checked="" type="checkbox"/> Granted <input type="checkbox"/> Denied
Ruling Basis:	The inmate should be provided adequate time to review his file and a Spanish interpreter to assist him with documents. Items and names in the POR are not confidential and we could find no data that would pose a security/safety concern for the inmate's consumption.

3

- ISSUE – Reviewing the Risk Assessment
- Review the Risk Assessment during the client interview.
- There is no guarantee the institution has already reviewed the risk assessment with your client.
- Ensure your client understands the risk assessment to the best of his or her abilities.
- An inmate may not remember having reviewed the risk assessment, or may not understand the term “risk assessment”

Example – An inmate who is DD3 and EOP had not reviewed his risk assessment prior to the hearing. During the hearing, the inmate's attorney asked for a postponement:

13 | I don't believe has had the opportunity to go through
14 | his Risk Assessment with someone who's certified to do
15 | that with him. And sounds like that accommodation is
16 | available through this institution. So I believe it's
17 | appropriate to continue this hearing until such time as
18 | he can have that accommodation met. And for all the

- Under the Panel Attorney Appointment Program, attorneys are responsible for reviewing the risk assessment with the client.
- Purpose of Reviewing the Risk Assessment:
 - Give your client the opportunity to object or make clarifying points to the risk assessment.
 - Discuss information in the risk assessment that is likely to be relevant to the suitability factors. Determine if your client's disability had an impact on those factors.
- If the risk assessment is not available at the time of the client interview, make arrangements to meet again, even the morning of the hearing.

- Use the information in the risk assessment effectively to advocate for your client at the hearing.
 - Risk Assessment Example Language:
 - Inmate is 65+, DD2, CCCMS, Low TABE, Mobility-Impaired – “Undeniably, he cannot prepare for parole by himself and he will need assistance from his clinical and correctional team”
 - Inmate is 50+, DD2, CCCMS, Low TABE - “His cognitive ability may make it unlikely that he would be able to develop a more robust level of insight.”

- Inmate is DD3, medical bed, low TABE. Panel quoted the risk assessment in the hearing decision:

5 | report was followed by a subsequent report by Dr. [REDACTED]
6 | [REDACTED] on [REDACTED], in which he says and I
7 | quote:

8 | "In sum, it seems clear that this inmate is
9 | severely impaired, both physically and
10 | cognitively. He has been described in the
11 | evaluations as suffering from dementia due to
12 | head trauma, meningitis, seizures and possibly
13 | alcohol abuse. And that his very poor state of
14 | functioning will make it difficult for him to be
15 | very violent in the community. He requires

- Advocate how you agree or disagree with the clinician's assessment.
 - You may agree with points, but disagree with the conclusion.
 - You may note the passage of time or change of circumstances since the last risk assessment.
 - Example – 40+ inmate was interviewed for the risk assessment in May 2015, but was screened as DD1 in July 2015. The clinician observed some limitations during testing, but there was no mention of DECS codes. Notably, the inmate's DD1 status was discussed during the hearing.

4

- ISSUE – Capacity for Insight
- Inmates with significant mental or cognitive disabilities may have less capacity for insight into the life crime or the factors that contributed to their criminality.
- Advocate for your client at the hearing:
 - Inmate may never fully understand or remember what happened.
 - Inmate may never be able to gain the same insight as someone without a disability. Make that distinction with the panel.
 - Inmate may have had a limited role in the crime, or was unduly influenced by crime partners.
 - Insight may no longer be a relevant suitability factor (e.g. physical limitations).

Example: Inmate is 50+, DD3, EOP, Low TABE. The attorney gave the following closing statement:

6 | demonstrated by his behavior. Again he may not be able
7 | to convey the same depth of understanding in terms of
8 | insight, in terms of how he's changed his behavior, as
9 | you might expect from a lifer appearing before you with
10 | a 12.9 TABE score, but again it's -- the proof is in the
11 | pudding. He understands it well enough to understand
12 | how to conduct himself in a proper, rule-abiding manner,

5

- ISSUE – Rules Violations & Counseling Chronos
- Review the Rules Violation Reports (115) and counseling chronos (128-A).
 - Determine if your client's disability existed at the time of the behavior.
 - See if your client's disability was addressed by the officer.
 - If not addressed, assess whether your client's disability could have had an impact on the behavior.
- Advocate during the hearing.

Disciplinary and Counseling History

Examples of disability mitigating conduct:

- **Vision Impairment**: a blind inmate may not be able to see a boundary line when cited for going out of bounds
- **Hearing Impairment**: a deaf inmate may not respond to a verbal instruction from a correctional officer
- **Mobility Impairment**: inmate with mobility limitations will likely not be able to “get down” during an alarm
- **Medical Impairment**: inmate with declining health may be cited for failure to report to work or other assignment if he has not yet received a medical restriction
- **Speech or Language Impairment**: inmate was unable to read written documentation explaining expectations for his or her behavior or was unable to comprehend a verbal instruction

Disciplinary and Counseling History

Examples of disability mitigating conduct:

- **Learning Disorder**: a learning disabled inmate stops going to school because he or she is frustrated
- **Developmental Disability**: a developmentally disabled inmate forgets to attend work or assigned programs, or is cited for “fighting” when he or she is actually the person being victimized
- **Mental Illness**: a mentally disabled inmate refuses groups during a depressive episode

Disciplinary and Counseling History

Examples of changed status:

- **Inmate received 115s for battery and fighting several years ago**; however, over the past year, inmate's health has declined due to medical impairment such that inmate is no longer capable of standing for more than a few minutes or walking more than a few steps.
- **Inmate received several 115s for poor conduct at a time when inmate was suffering from psychotic episodes and was unaware of his/her mental health issues**; however, over the past few years, inmate began receiving treatment, is now fully compliant with psychotropic medications, and has insight into the symptoms of the mental health issue.

Clinical Evaluations for Inmates with Mental Health or Developmentally Disabilities

Before adjudication of a Rules Violations Report (115), a mental health clinician will write a mental health evaluation (CDCR 115 MH-A) for the following inmates:

- Mental Health - **EOP, MHCB, Acute Psychiatric, Intermediate level of care.**
- Mental Health - **CCCMS** and the inmate has been charged with a **Division A, B, or C offense**, or an offense which could result in a **SHU term**.
- Any inmate who exhibits **bizarre or unusual behavior**.
- **Developmental Disability Program** - DD1, DD2, or DD3.
- Act of **Indecent Exposure** or **Sexual Disorderly Conduct**.

- **In the 115 MH-A, the clinician will assess:**
 - The inmate's ability to understand the disciplinary process,
 - Whether the inmate's mental or developmental disability **influenced** or **contributed to** the conduct resulting in the 115, and,
 - If found guilty, what mental health or developmental disability factors should be considered in assessing the penalty.
- The hearing officer is not bound by the clinician's recommendations, but is required to take them into consideration prior to ruling on the 115.

RVR Exclusionary Criteria

- Inmates shall not be issued a 115 if:
 - The behavior occurred in connection with a cell extraction for the administration of **involuntary medication**.
 - The behavior occurred in connection with a **cell extraction for transfer** of the inmate to a mental health inpatient or between mental health inpatient units.
 - The behavior occurred in connection with being **placed in mental health restraints** and/or seclusion.
 - The behavior is determined to be an act of **self-mutilation or attempted suicide**.
- **If your client has a prior RVR for one of these issues, advocate to the panel that this is no longer considered a rules violation.**

Example:

- Inmate is 40+, DD3, and EOP.
- In 2014, he received a 115 for indecent exposure when observed masturbating by an officer. At the time, there was a mental health review, the behavior was not mitigated due to his mental health or DDP status, and he was assessed 61 days loss of credit.

REMEMBER:

- ▶ 115 MH-A process is relatively new (past few years).
 - ▶ Previous versions include 115-MH and the 115-X.
 - ▶ Check for high classification scores from old disciplinarians that pre-date the mental health assessment processes
- ▶ Even if you don't see a 115 MH-A, assess whether your client's behavior could have been impacted by his or her disability and advocate to the panel.

REMEMBER:

- ▶ No similar process exists for counseling chronos 128-A.

Example: Inmate is 65+, DD2, CCCMS, Low TABE, Mobility Impaired.

NAME and NUMBER

C2B-122

On **October 5, 2015**, Inmate [REDACTED] was given the opportunity to attend his DENTAL appointment at 745 time. Inmate [REDACTED] refused to attend his DENTAL appointment at approximately 719 hours. Inmate [REDACTED] is in violation of CCR Title 15 3014. (Calls and Passes) "Inmates must respond promptly to notices given in writing, announced over public address system or by any other authorized means. Inmate [REDACTED] was given a written pass/ducat for this appointment and failed to report to the appointment as directed.

This CDC-128A it has been prepared for placement in inmates file(s) to document the inmate's refusal to attend his DENTAL appointment, and document failure to comply with rules regarding "Calls and Passes" (3014).

[REDACTED]

Correctional Officer
California Health Care Facility Stockton

Original: Central File
cc: RVR Registry
Writer
Inmate



- **ISSUE – Access to Programming**
- An inmate with disabilities may not have full access to programming based on physical limitations, workplace safety concerns, and educational requirements.
- An inmate with disabilities may have spent considerable time in a program, but may not have much to show for it.
 - E.g., inmate is unable to achieve GED, inmate cannot articulate the 12-Steps of AA/NA
- Advocate on behalf of your client at the hearing.
 - **NOTE:** Paragraph 37 of the Armstrong Revised Permanent Injunction (dated 2/11/02) provides that the Board “shall not recommend that prisoners participate in programs that are unavailable to them by reason of their disabilities and shall not rely on the failure of prisoners to participate in programs not available to them by reason of their disabilities as a factor supporting denial of a parole date or a multi-year denial.”

- **Mental Health**

- Inmates in EOP or higher levels of mental health care have mental health programming requirements, and will likely not have other assignments.
- Most of the documentation of their mental health programming will be maintained in medical records, not the c-file.

- **DDP**

- Inmates in the Developmental Disability Program are typically housed in a specialized unit, but have access to General Population programming.

- **Medical Beds**

- Inmates in medical beds will likely have no access to programming.

- **Learning Disorders**

- A learning disability might impede the ability to advance in educational programs
- Lack of progress in education could make it difficult to gain admission to vocational or PIA programming

7

- ISSUE – Postponements
- **AVOID POSTPONEMENTS**
- Postponing a hearing usually means your client won't get a new hearing for several months.
- Do what you can pre-hearing to remedy logistical problems and gather all necessary information.
- Do not assume another attorney can do a better job or that your client will be in a better situation (with regard to his disability) in six months.

- **Difficulty representing an inmate is not a reason to delay a hearing.**
 - CDCR has an aging lifer population, and attorneys will encounter inmates who are difficult to represent due to their disability.
 - Unlike criminal trials, the inmate does not need to be able to assist in his defense at the parole hearing. The hearing panel is assessing the inmate's current risk of dangerousness based on the entire record.

- **Encourage your client to attend his or her hearing, even if just to discuss a waiver, postponement, or stipulation**
 - It is helpful for a panel to meet your client face-to-face
 - Some EOP and DDP inmates do not want to leave their cells for a hearing, and may need to be prompted and coached
 - On the day of the hearing, if your disabled client refuses to come to the hearing, meet with your client (at cell front, if needed) to encourage your client to come to the hearing
- **Before making any requests, ensure your client understands the consequences of requests for waivers, stipulations, or postponements, and agrees with the request.**
 - Inmates with developmental disabilities may be overly compliant and go along with something they don't understand. They are easily influenced by persons of authority (i.e., attorney, commissioners, correctional officers).

- Class Action counsel express concern when an inmate with a disability has gone beyond the timeframe for his next scheduled hearing due to multiple waivers, stipulations, or postponements.
- Example: Inmate is 65+, DD2, CCCMS, Low TABE, Mobility Impaired:
 - 10/23/1990 – 1 year denial
 - 9/25/1991 – 2 year denial
 - 12/5/1995 – 2 year denial
 - 9/1/1998 – 2 year denial
 - 7/9/2001 – 2 year denial
 - 7/15/2003 – 2 year stipulation, unknown reason
 - 7/1/2005 – 1 year stipulation, unknown reason
 - 12/27/2006 – 1 year stipulation to develop parole plans
 - 12/6/2007 – 2 year stipulation to develop parole plans and participate in next RA
 - 11/12/2009 – 2 year postponement for pending 115
 - 8/30/2011 – 3 year postponement to develop parole plans and continue programming
 - 10/10/2014 – parole grant



- ISSUE – Making a Record
- Ensure ALL disabilities and relevant accommodations are addressed on the record.
 - This includes any appliances brought by the inmate to the hearing (e.g. glasses, wheelchair).
- Raise objections or points of clarification to the hearing panel during the ADA review.
- Ask clarifying questions to address how your client's disability may have an impact on issues of programming, insight, disciplinary reports, etc.
- Argue in your closing statement how relevant suitability factors may be impacted by your client's disability.

- Advocate on the record any limitations your client has related to his or her disabilities and the expectations placed on him or her at the previous hearing.
- Object to any unrealistic expectations placed on your client during the current.
 - Example: Panel recommends your client obtain GED or make parole plans but he or she is not able to do so due to disability

- If helpful, provide a description of your client's appearance and physical condition since the transcript won't reflect that.
- Example: Inmate is 80+, medical bed, mobility, vision, and hearing impairments. Inmate was not present at the hearing so the attorney offered to describe his condition.

6 **ATTORNEY [REDACTED]** There is nothing else except
7 that I can provide a physical description my impression
8 of him.

9 **PRESIDING COMMISSIONER [REDACTED]:** Yes. I would
10 appreciate that.

11 **ATTORNEY [REDACTED]:** Okay. He appears very frail.
12 He walks with a cane. He has an eye patch over one eye
13 and his other eye is essentially completely glazed over
14 and clearly cannot see anything. His hearing is very
15 poor even with the hearing aids in. He is very hard of
16 hearing. I think probably the entire hallway of staff
17 can attest to that based on our conversations.

Attorney as Accommodation

- For inmates with specified disabilities, the attorney is the accommodation, and cannot be waived.
- **Mandatory Attorney Appointment:**
 - **Mental Health** - All inmates in the EOP, ICF/Acute, or MHCB level of care.
 - **Developmental** - All inmates in the Developmental Disability Program.
 - **Learning** – All inmates with a TABE score (overall or reading) of 4.0 or below.
- **Presumptive Attorney Appointments:**
 - **Mental Health** – CCCMS level of care

Post-Hearing

- If there are concerns with how the inmate's disabilities were handled during the hearing process, send a grievance or request for decision review to the Board of Parole Hearings.
- Your concerns will be reviewed by the ADA Compliance Unit and/or Legal, and may result in a modification to the hearing.



- ISSUE – Checking for Understanding
- Ensure there is effective communication throughout the hearing.
 - Interrupt when your client does not appear to be understanding the questioning or you believe your client needs help focusing.
 - Ask the panel to rephrase questions or seek clarification.
 - Ask for a break to meet with your client.
- Inmates with developmental disabilities may answer yes without understanding the question, seeking to please the interviewer.
- Use the Staff Assistant, but don't assume the Staff Assistant will address all problems.

Staff Assistant

- A staff assistant should be present for all hearings for inmates with developmental disabilities.
- Use the staff assistant as a tool for communication.
 - The staff assistant may have different techniques or a fresh approach in explaining a complex concept.
- **It is YOUR ROLE to advocate for your client if your client does not appear to understand.**



- ISSUE – Parole Plans
- **Remember:** An inmate can be granted parole without parole plans, but it is helpful if you can assist your client with obtaining parole plans or support letters.
 - Especially for inmates who have difficulty reading and writing.
- Address for the panel how your client's disability may impact her ability to secure her own parole plans.
- Example of an attorney's closing statement.

```
8 | While he does not have parole plans today, he is EOP and
9 | DD3 and as such would be eligible for assistance by the
10 | Department of Adult Parole Operations to help find an
11 | appropriate placement for him should the Panel feel that
12 | apart from a lack of parole plans that he does not
13 | currently represent an unreasonable risk of danger.
```

Parole Plans Resources

- The Division of Adult Parole Operations (DAPO) has several contract beds in transitional housing programs. They also work with local counties to identify placements for inmates with disabilities, when needed.
 - DAPO also assists with obtaining benefits: Low Income Health Program, Medi-Cal, Social Security Disability, Supplemental Security Income, VA, etc.
- The County of Last Legal Residence is legally responsible for the medical needs of indigent residents (WIC 17000).
- Some inmates with developmental disabilities may be eligible for services from the Department of Developmental Services.

Final Thoughts

- ▶ Do the best you can with difficult situations.
- ▶ Don't be hesitant to ask questions or interject.
- ▶ Don't forget the **three goals** of assisting inmates with disabilities:
 1. Enable inmates with disabilities to prepare for and participate in their hearings to the best of their abilities.
 2. Ensure all necessary accommodations are provided to your client throughout the hearing.
 3. Advocate to the hearing panel how the inmate's disability may impact relevant suitability factors.

Further Resources

- *Armstrong I* Remedial Plan – CDCR's plan for most disabilities
- *Clark* Remedial Plan – CDCR's plan for inmates with developmental disabilities
- *Armstrong II* Remedial Plan – BPH's plan for all ADA inmates
- Foreign Language Interpreter – Telephonic Services Numbers
- ADA Codes (DECS Codes) Handout
- CDCR Armstrong Coordinators contact information
- Best Practices for Representing Inmates with Disabilities

Further Resources

- **CDCR Forms**

- CDCR 128-C2, Developmental Disability Program Screening Results
- CDCR 1824, Reasonable Modification or Accommodation Request
- CDCR 7385, Authorization for Release of Medical Information
- CDCR 7410, Comprehensive Accommodation Chrono

- **BPH Forms**

- BPH 1073, Notice and Request for Assistance at Parole Proceedings
- BPH 1074, Request for Reasonable Accommodation – Grievance Process

Questions?

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